

Texas General Land Office
Relinquishment Act Lease Brochure
Revised October, 2001

I. NEGOTIATING A RELINQUISHMENT ACT LEASE

Enacted in 1919, the Relinquishment Act reserves all minerals to the State in those lands sold with a mineral classification between September 1, 1895 and June 29, 1931. Under the Relinquishment Act, the “owner of the soil,” also commonly known as the surface owner, acts as the agent for the State of Texas in negotiating and executing oil and gas leases on Relinquishment Act land. The State surrenders to the surface owner one-half (½) of any bonus, rental and royalty as compensation for acting as its agent, and in lieu of surface damages. The owner of the soil’s agency power is somewhat limited, however, because the General Land Office publishes a standard Relinquishment Act lease form which must be used to lease Relinquishment Act land. Additionally, the General Land Office must approve the consideration paid for any Relinquishment Act lease and no lease is effective until it has been approved and filed in the General Land Office. The following information will provide some guidelines for negotiating a Relinquishment Act lease.

DEFINITIONS

These following terms have these meanings in this brochure:

“**Board**” refers to the School Land Board.

“**Commissioner**” refers to the Commissioner of the General Land Office.

“**GLO**” refers to the General Land Office.

“**owner of the soil**” and “**surface owner**” refer to the same individual and are used interchangeably.

“**RAL**” refers to a Relinquishment Act lease form.

FIDUCIARY DUTY OF THE OWNER OF THE SOIL

The owner of the soil owes a fiduciary duty to the State, meaning he must act in the best interest of the State and must fully disclose any facts affecting the State’s interest. When the interests of the owner of the soil conflict with those of the State, the owner of the soil is obligated to put the State’s interest before his or her personal interest.

When the Commissioner determines that an owner of the soil has breached any duty or obligation, the Commissioner may request that the Attorney General file an action or

proceeding either to enforce the duties and obligations of the owner of the soil or to forfeit the surface owner's agency fights. Self-dealing could also subject a surface owner to punitive damages.

SELF-DEALING BY OWNER OF THE SOIL

The owner of the soil may not lease, either directly or indirectly, to: (1) certain individuals related to him including a person related by adoption, or any corporation or subsidiary in which that person is a principal stockholder, or to a partnership in which that person is a partner, or to an employee of such a corporation or subsidiary or partnership; (2) himself or to a nominee. If the owner of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver or conservator. **EXCEPTION:** An owner of the soil who wishes to lease to a person, corporation or partnership described in Subdivision (1) above may request the approval of the Board for authority to execute such a lease before its execution. The owner of the soil requesting approval must also execute and file with the Commissioner a sworn affidavit stating that the owner of the soil will not receive any benefit under a lease approved by the Board that will not be shared with the Permanent School Fund.

LEASE BY OWNER OF THE SOIL

An owner of the soil may apply in writing to the Board for an oil and gas lease. In addition to other information, the owner must provide: a statement of his experience in oil and gas exploration and production; the amount of bonus, rental, royalty (these are paid by the owner of the soil to the State of Texas), and other lease terms that the applicant proposes to pay or offer for the lease; and also copies of geological, geophysical, geochemical and other data pertinent to mineral exploration on the subject lands. GLO staff shall review the information in the application, and prepare a report for the Board containing a summary of the terms being offered and any additional factual data considered to be relevant. This report shall include, but not be limited to, data concerning the land proposed to be leased and its estimated value for oil and gas exploration and production, recommended lease terms, and information concerning the applicant, including the applicant's history of leasing State of Texas or federal lands for oil and gas. The Board shall consider the application at a regular meeting. If the Board approves the application, the Commissioner shall issue a lease to the applicant. Additional information concerning this subject may be found in Section 52.190 of the Texas Natural Resources Code.

NO COLLATERAL AGREEMENTS

Any term, condition or agreement relating to the mineral development of a Relinquishment Act tract must be included in a Relinquishment Act lease form which is submitted to the GLO. Consequently, a surface owner cannot enter into a separate agreement for surface damages or surface easements (including pipeline easements). Participation by the owner of the soil in the bonus, rentals and royalties is in lieu of surface damages and any such collateral agreement could

render the lease invalid and subject the surface owner's agency rights to forfeiture.

DATING LEASE

The data filled in at the top of the lease will be used to set the anniversary date. This date will usually be the date when the lessee and the owner of the soil reach an agreement.

However, regardless of the date of the lease, the GLO will evaluate the lease consideration by using market conditions which exist when the proposed lease is received by the GLO.

TOP-LEASING

Top leasing is prohibited; the owner of the soil does not have the authority to execute a new lease while a prior lease is in effect.

NAMING OWNERS OF THE SOIL

If there are several surface owners, the lessee may take one lease which includes all surface owners or lessee may take a separate lease for each surface owner. However, anyone with an interest in the surface estate (for example, owners of a community property interest, life tenants, remaindermen, etc.) should be leased up. If all interests are not leased up, then, upon commencement of production, the GLO will receive monies attributable to the unleased interest. (See Paragraph 20 of September 1997 RAL forms).

EXECUTION BY THE OWNER OF THE SOIL

An owner of the soil cannot delegate his agency powers to another individual. However, if the owner of the soil is a corporation, it may designate an agent or attorney-in-fact to execute a lease on its behalf. No other attorney-in-fact will be recognized by the GLO. A guardian must have a specific court order empowering him to execute a Relinquishment Act lease on behalf of his ward.

ADDRESS

All Relinquishment Act leases must contain an address where each party can be reached. Where several undivided interest surface owners are included on one lease form, the parties may designate one address where all the surface owners can be reached.

LEGAL DESCRIPTION

A complete legal description must state the portion (i.e., N/2) of the section and the abstract number. A scaled plat should also be provided, especially in situations where metes and bounds descriptions are not available. If deed references are used, a copy of the referenced deed should accompany the lease. Depth limitations, where applicable, should also be recited in the legal description. Up to four sections (2,560 acres) may be leased, although tracts must be contiguous

or within ½ mile of the nearest tract described in the lease. Touching corners will be construed contiguous.

STATEMENT OF BONUS

By statute, each Relinquishment Act lease must state the true and actual consideration paid for the lease. The amount of bonus consideration paid to the State must equal the bonus consideration paid to the owner of the soil. The owner of the soil, however, may waive his share of the cash bonus or defer his bonus. The statement of bonus must clearly state the number of acres leased. If a lease covers the undivided interest, state the net acres leased. If a lease covers the entire tract, state the total acres in the tract and strike the word “net” from Paragraph 1.

PRIMARY TERM

A lease may be taken for a primary term of up to five years. Options to extend the primary term are prohibited.

DELAY RENTALS

Paragraph 3 should reflect that delay rentals of equal amounts will be paid to the owner of the soil and to the State. If a lease is a paid-up lease, this fact must be stated in Paragraph 3 and an additional paragraph outlining the payments made must be added to the lease. Paragraph 3 should cross-reference the additional paragraph. The bonus consideration and paid up rental amounts must be shown separately.

If a lease is a one-year lease, Paragraph 3 should be deleted.

Late payment of rental will automatically terminate the lease.

ROYALTY

The gross royalty should be stated in the lease. All subparagraphs of Paragraph 4 must recite the amount of royalty.

ROYALTY PAYMENTS PROVISIONS

Paragraph 9 sets out the schedule for payments of royalties to the State. The owner of the soil may insert additional language in Paragraph 9 so that the payment of his royalties coincides with the payment of the State’s royalties.

PERMITS, REPORTS AND RESERVES

Paragraph 10 requires the word “State” to appear on any well or tank battery sign on the leased premises or in any report or document relating to a well or tank battery on the leased premises. This requirement will allow the GLO to easily identify State property when out in the field or

when reviewing documents, including drilling permits. Paragraph 10 also lists certain Railroad Commission documents which must be filed in the GLO.

WARRANTY OF TITLE

The warranty of title provision in Paragraph 19 may be deleted.

PROPORTIONATE REDUCTION CLAUSE

If lessee finds that the interest actually owned by the owner of the soil is less than that recited in the granting clause of the lease, he may proportionately reduce rentals and royalties under Paragraph 20 provided that the lessee submits an affidavit explaining the reduction. A release of acreage will also entitle a lessee to reduce payments.

FIDUCIARY DUTY

Paragraph 31 explains the fiduciary duty that the owner of the soil owes to the State. This duty requires the owner of the soil to fully disclose to the GLO any facts which affect the State's interest in the leased premises. This duty has been codified at Section 52.189(b) of the Texas Natural Resources Code.

FORFEITURE

Paragraph 32 explains the statutory power of the Commissioner to forfeit a Relinquishment Act lease. The Commissioner has always had this forfeiture power. However, the new RAL educates lessees and assignees who may not be familiar with Section 52.176 of the Texas Natural Resources Code.

POOLING CLAUSE

The School Land Board and the Commissioner of the General Land Office must approve the pooling of the leased premises before it can be validly included in a unit.

II. EXECUTING AND FILING A RELINQUISHMENT ACT LEASE

Once the owner of the soil and the prospective lessee have negotiated a lease, the lease must be submitted to the GLO for approval, at the following address:

Mineral Leasing Division
Texas General Land Office
Attn: Drew Reid
1700 North Congress Avenue, Room 600
Austin, Texas 78701-1495

Lease submittals must include a cover letter which contains the following information:

1. The interest being leased (full interest or net undivided interest). If the acreage is owned by more than one party, a list of all owners must be provided;
2. Bonus per acre being paid;
3. Primary term of lease;
4. Rental per acre being paid;
5. Gross royalty being paid.

Any changes or new provisions to be added to the standard RAL form should be submitted at this time.

Once the owner of the soil and the prospective lessee have negotiated a lease, the following guidelines are recommended for completing the leasing process:

A. If the lessee and surface owner wish to receive prior approval by the GLO, an unexecuted, unrecorded copy of the proposed lease may be submitted. Such submittals must include the \$100 processing fee for each lease but should not be accompanied by the State's share of the bonus or the filing fee. The lease will be reviewed by the GLO and a letter will be sent to the party submitting the lease stating either that the lease will be accepted or that changes will be required.

B. The lessee and surface owner may execute and file the lease of record in the county courthouse prior to submittal to the GLO for approval. A certified copy of the lease should be submitted to the GLO along with the State's share of the bonus, the required \$25 filing fee, and the required \$100 processing fee (*unless* this fee has been paid to the GLO during the prior approval process explained in paragraphs B and C, below) for each lease (undivided interest leases having the same legal description and which are submitted at the same time can be covered by one processing fee). After review by the GLO a letter will be sent to the party that submitted the lease stating either that the lease will be accepted or that changes will be required.

If changes are required and the lease has already been filed of record in the county courthouse, a release of the filed lease must be filed before a new lease may be executed by the owner of the soil. A certified copy of the release must be submitted to the GLO. The modified lease can then be executed by the owner of the soil, filed of record in the county courthouse, and resubmitted to the GLO.

C. When the GLO has approved the lease, if the lease has not been executed by the owner of the soil or filed in the county courthouse, then those steps must then be accomplished, and a certified copy of the lease, the State's share of the cash bonus, and a \$25 filing fee per lease should be submitted to the GLO. The certified copy must state that the lease is a "true and correct copy" of the original and must have the seal of the county clerk affixed or stamped thereon.

D. Section 52.183 of the Texas Natural Resources Code provides that no Relinquishment Act oil and gas lease is effective until a certified copy of the recorded lease is filed in a mineral file in

the GLO. Once the certified copy of the executed lease has been filed with the GLO, a letter bearing the mineral file number of the file will be sent to the lessee. Please refer to this mineral file number in all correspondence or inquiries which concern this lease and which are directed to the GLO.

III. RECORDING TERMINATED RELINQUISHMENT ACT LEASES

Under the standard Relinquishment Act lease form, lessees who voluntarily release acreage from the lease must record the release in the county clerk's office and a certified copy must be filed with the GLO within 90 days of the execution date accompanied by a \$25 filing fee, per instrument. When Relinquishment Act leases terminate by their own terms, lessees are under no obligation to record this termination of the lease in the county clerk's records.

If the owner of the soil wishes to record the termination of his Relinquishment Act lease, he may request the GLO to mail him a recordable document, which he may then send, along with appropriate recording fee, to the county clerk where the Relinquishment Act Land is located.

The owner of the soil is under no obligation to record such evidence of termination in the county clerk's office. However, the owner of the soil is encouraged to use this opportunity to publicize the fact that the tract is again available for lease.